



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Real Estate Board
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 135-60
<b>Regulation title</b>	Real Estate Board Common Interest Community Management Information Fund Regulations
<b>Action title</b>	Restructure registration fees proportional to the size of the community
<b>Date this document prepared</b>	August 2, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

The proposed fee structure is divided into seven (7) categories reflecting a graduated scale which represents the number of units/lots in a community. Also, the initial application fee is different and slightly higher than the annual renewal fee. Language has been added to have registration certificate expiration dates coincide with the community's annual meeting to elect officers.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The Common Interest Community Management Information Fund is created in § 55-529 of the Code of Virginia "to be used in the discretion of the Real Estate Board to promote the improvement and more efficient operation of common interest communities through research and education." The Board's

authority to promulgate regulations is established in § 55-530 which states that “the Board may prescribe regulations which shall be adopted, amended or repealed in accordance with the Administrative Process Act to accomplish the purpose of this chapter” (Chapter 29 of Title 55 of the Code of Virginia - Common Interest Community Management Information Fund).

**Purpose**

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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House Joint Resolution 686 (2005 Session) requested the Virginia Real Estate Board to conduct a study to review the adequacy of, training of, and disclosure of financial information to consumers by financially compensated professional managers of condominium associations, property owners’ associations and other similar common interest communities. As a result of this study, the Board concluded that further education was needed to make associations and those who are directing them better aware of their duties and responsibilities to their communities and would help to alleviate potential problems and misunderstandings with financially compensated professional association managers. The Board acknowledged that because of high volume of turnover in associations and board membership, training should be an ongoing process.

The Board further concluded that the Common Interest Community Management Information Fund Regulations should be revised to create an annual filing fee schedule structured proportional to the size of the association. An association of 5 lots/units should not be paying the same fee as an association containing 5,000 lots/units. Currently, the annual filing fee for all associations is \$25 regardless of size. This increase in funding would be used to either hire additional staff to assist the Community Association Liaison or to engage a third-party firm to provide the much needed training/education for associations.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)*

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The current filing fee is \$25 annually for all associations regardless of size. The proposed seven-tier fee structure would increase revenue to provide funding for additional training and education for common interest communities and those who run these communities. Since the larger registration fees are for the larger communities, there is relatively no impact on the individual unit/lot owner.

Since more administrative input is required by Board staff when processing initial applications, an application fee has been created which is slightly higher than the annual renewal fee.

In an effort for Board staff to maintain current information on a community’s point of contact and officers, language has been added to have registration certificate expiration dates coincide with the community’s annual meeting to elect officers. This will ensure that communities can be contacted for informational and educational purposes.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

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The primary advantage to the public, who are unit owners/lot owners, would be to alleviate potential problems and misunderstandings with financially compensated professional association managers as well as conflicts between association boards and their membership. Informing association membership of how an association should operate and of their responsibilities and opportunities as unit owners/lot owners will encourage participation by members in community meetings and will foster volunteers to serve on boards and committees. This process must be ongoing because of the high volume of turnover in associations and their board membership.

The primary advantage to the agency will be that an increase in fees will generate the necessary funding for the Board to provide more training to associations and those who are directing them in an effort to educate them regarding their duties and responsibilities to their communities as required by the Property Owners' Association Act and the Condominium Act.

This regulatory action poses no disadvantages to the public or the Commonwealth.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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There are no applicable federal requirements.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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Most cities and counties in the Commonwealth will be affected since most localities contain Common Interest Communities.

### Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Thomas K. Perry, DPOR, Real Estate Board, Property Registration, 3600 West Broad Street, Richmond, VA 23230; 804-367-8510; Fax 804-367-6946; [propreg@dpor.virginia.gov](mailto:propreg@dpor.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	See below.
<b>Projected cost of the regulation on localities</b>	See below.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	See below.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	See below.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	See below.

**Common Interest Community Management  
Fiscal Impact of Proposed Regulation**

**Summary:**

The Real Estate Board has determined that the Common Interest Community Management Information Fund Regulations should be revised to create a fee structure based on the size of the association. The

current filing fee is \$25 annually for all associations regardless of number of units. The proposed regulations include a new graduated fee structure, with fee amounts that increase based on the number of units in the association. The fee increases will provide additional revenues for increased levels of training and education for common interest communities and those who manage those communities regarding their duties and responsibilities as required by the Property Owners’ Association Act and the Condominium Act. House Joint Resolution 686 (2005 Session) requested the Virginia Real Estate Board to conduct a study to review adequacy, training, and disclosure of financial information to consumers by financially compensated professional managers of condominium associations, property owners’ associations and other similar common interest communities. As a result of this study, the Board concluded that expanded education was needed to better inform property owners’ associations and other similar common interest communities, and those who are directing them, of their duties and responsibilities. Because of the increasing number of new associations and high turnover in associations and board membership, training and education activities are needed on an ongoing basis. The expected outcomes of the training include alleviating potential problems and misunderstandings with financially compensated professional association managers, and reducing conflicts between association boards and their membership.

In an effort for Board staff to maintain current information on a community’s point of contact and officers, language has also been added to the proposed regulations to have registration certificate expiration dates coincide with the community’s annual meeting to elect officers. This will ensure that communities can be contacted for informational and educational purposes.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and registrants. The board has no other source of income.

**Fiscal Impact:**

	FY 2007	FY 2008	FY2009	FY2010
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
Revenue Impact	0	0	128,841	132,479
One-Time Costs	0	0	0	0
Ongoing Costs	0	0	0	0
Total Expenditure Impact	0	0	0	0
FTE	0.00	0.00	0.00	0.00

**Description of Fiscal Impact:**

Revenue: The additional revenue will be generated from fee increases in the graduated fee structure.

One-Time: There are no one-time costs associated with the proposed regulations.

**Ongoing:** There are no ongoing costs that will be incurred directly as a result of the proposed regulations. However, the Board's operating expenditures are expected to increase in future years as it expands its education and training activities as a result of the HJR 686 study. The additional revenue from fee increases will provide the funding for those activities.

**Cost to Localities:** There are no anticipated costs to localities.

**Description of Individuals, Businesses, or Other Entities Impacted:** Property owners associations; condominium associations; property owners in a registered association.

**Estimated Number of Regulators:** The Board currently registers approximately 3,600 associations.

**Projected Cost to Regulators:** Current fees are \$25 annually for all associations. The proposed fee structure will be based on the number of units in an association. Application fees will be established at rates higher than renewal fees since they require more administrative processing work, and will range from \$45 for associations with less than 50 units to \$180 for associations with more than 5,000 units. Renewal fees will range from \$30 for associations with less than 50 units to \$170 for more than 5,000 units. Since the fee amounts will increase with the number of units, minimal impact is anticipated on the cost to individual unit owners.

## Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

Failure to revise fees to increase funding would result in a decline in the effectiveness of the Community Association Liaison's position as well as an increase in problems and misunderstandings with those who are directing the associations. No viable alternatives could be determined.

## Regulatory flexibility analysis

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

No viable alternatives could be determined. The proposed changes are not expected to have an impact on small businesses.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
<p>Bill Brush 540-721-4390 <a href="mailto:wbrush@charter.net">wbrush@charter.net</a></p>	<p>The \$25 fee collected annually for property association registration is a fee for which virtually no service is rendered. The state enforces none of the POA regulations or oversees proper management or operation of an association. Limited training is provided that may justify the \$25 fee collected.</p> <p>Charging large associations a greater fee seems unwarranted. Does it take any longer to issue the registration card to an association of 100 homes or 6 homes? The answer is no. This office does little more than collect a tax, issue a card and occasionally sponsor a training seminar. It's really hard to see the value in registering--since there is no penalty or enforcement for not doing so.</p>	<p>The Board will take this comment into consideration when drafting proposed regulations. Mr. Brush is encouraged to comment on those regulations during the public comment period to be held after the Board formally adopts proposed regulations.</p> <p>Mr. Brush is encouraged to review the Board's Report of the study it conducted as a result of HJR 686 (2005 Session).</p>
<p>Bob Roberts Hemlock Shores POA (Town Hall Public Comment Forum)</p>	<p>I have read all the data pertaining to Common Interest Community Management Information Fund Regulations. The information on your website is very close to zero and I would be interested in exactly what you are talking about.</p>	<p>The Board thanks Mr. Roberts for his comments and encourages him to review the Agency Statement posted on the Regulatory Town Hall.</p>
<p>Roger L. Winters President Runaway Bay Homeowners Association, Inc. PO Box 120 Altavista, VA 24517-0120 <a href="http://www.runawaybayhoa.org">www.runawaybayhoa.org</a></p>	<p>This notice contains insufficient information to support understanding the rational and justification for the proposed action.</p> <p>The referenced NOIRA provides no proposed basis and limits for imposition of fees.</p> <p>We see this NOIRA insufficiently justified and rationalized. We would expect that if changes in</p>	<p>The Board thanks Mr. Winters for his comments and encourages him to review the Board's Report of the study it conducted as a result of HJR 686 (2005 Session) which justifies amending the regulations. Specific changes are found in the proposed regulations.</p>

	<p>the rules are supportable, clarifications would be forthcoming by amendment to the NOIRA.</p>	
<p>Betty Groth (Town Hall Public Comment Forum)</p>	<p>I am a member of a HOA, and I work for a developer who creates owners associations as declarant.</p> <p>I support the concept of restructuring the fees for common interest communities based on size of community. I was not able to find any specifics as to the proposed size/fee.</p> <p>I would caution the Board that any fees imposed must continue to be reasonable to encourage associations to comply. An increase in educational programs/information for common interest community board members and residents is strongly needed.</p>	<p>The Board thanks Ms. Groth for her comments and support for a restructuring of fees. Specific changes are found in the proposed regulations.</p>
<p>Court Ehrhardt President Valley Mills Crossing Homeowners Association 104 Mill Lake Road Hudleston, VA 24104</p>	<p>The Valley Mills Crossing Homeowners is against the proposed regulatory action until more information is available to support that the proposed fee restructuring will be a benefit to our community.</p> <p>The VMCHA was unable to determine what criteria is the basis for the restructuring of fees. No information was available on what the proposed fees will be, how the size of the community is determined, what the extra funds will be used for, how much of the funds will be used for administrative costs, and why the fees need to be restructured at this time.</p>	<p>The Board thanks Mr. Ehrhardt for his comments and encourages him to review the Board's Report of the study it conducted as a result of HJR 686 (2005 Session) which justifies amending the regulations. Specific changes are found in the proposed regulations.</p>
<p>Joseph R. Weatherspoon President Association of Lake Area Community Associations 100 Spruce Pine Drive Pittsville, VA 24139</p>	<p>Mr. Weatherspoon cannot support a fee increase because every association receives the same services from the CIC Liaison and it costs no more to manage the records for a 300 lot association than it does for a 12</p>	<p>The Board will take this comment into consideration when drafting proposed regulations. The General Assembly has given the REB no enforcement authority over CIC associations. Regarding guidelines for associations, Radford University has developed for the Fund a</p>

	<p>lot association.</p> <p>There is a lack of enforcement actions for associations that do not register with the REB. Suggests providing a handbook with guidelines for small self-managed associations.</p>	<p>set of Resource Guides which are available on the CIC Liaison's Web Page.</p>
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**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The proposed changes are not expected to have an impact on families.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>																								
18 VAC 135-60-60	Same	Annual report filing fee for all communities is \$25.	<p>To lessen the financial burden on individual unit/lot owners, larger registration fees are planned for the larger communities. The following seven-tier fee structure is proposed:</p> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th><u>Number of Lots/Units</u></th> <th><u>Application Fee</u></th> <th><u>Renewal Fee</u></th> </tr> </thead> <tbody> <tr><td>1 - 50</td><td>45</td><td>30</td></tr> <tr><td>51 - 100</td><td>65</td><td>50</td></tr> <tr><td>101 - 200</td><td>100</td><td>80</td></tr> <tr><td>201 - 500</td><td>135</td><td>115</td></tr> <tr><td>501 - 1000</td><td>145</td><td>130</td></tr> <tr><td>1001 - 5000</td><td>165</td><td>150</td></tr> <tr><td>5001+</td><td>180</td><td>170</td></tr> </tbody> </table>	<u>Number of Lots/Units</u>	<u>Application Fee</u>	<u>Renewal Fee</u>	1 - 50	45	30	51 - 100	65	50	101 - 200	100	80	201 - 500	135	115	501 - 1000	145	130	1001 - 5000	165	150	5001+	180	170
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			<p>A separate fee, which is slightly higher than the annual renewal fee, has been created for initial applications since more administrative input is required by Board staff when processing these applications.</p> <p>Language has been added to indicate that registration certificates are renewable in the month that the community holds its annual meeting to elect officers. This addition will assist Board staff in maintaining current information on a community's point of contact and officers. This will ensure that communities can be contacted for informational and educational purposes.</p>
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